

Serial No.: 09/902,750

REMARKS

The specification has been amended to provide descriptions of all but two of the items listed under D. and E. on page 2 of the Office Action. Applicant points out branch length and width characteristics are not applicable to the claimed variety, a spray mum which does not produce branches. A pot mum provides branches; a spray mum does not. No calyx color is indicated because calyx is not present in the plant. The specification has been revised to indicate that the ovaries are enclosed in perianth, rather than in calyx. The claim is believed, therefore, to be in compliance with the first and second paragraphs of 35 USC 112.

Enclosed, as required, are copies of related Plant Breeder's Rights applications.

The rejection of claim 1 under 35 USC 102 as anticipated by NL PBR CHR3118, in view of the statement in the last reply that the first sales of the variety took place in November 1999, is respectfully traversed.

The Examiner acknowledges that the publication by itself is not sufficiently enabling to the person of ordinary skill in the art to be able to practice the invention. The Examiner asserts, however, that the sale of the plants in November

Serial No.: 09/902,750

1999, taken with the publication, constitutes a bar to patentability. Applicant respectfully disagrees and points out that 35 USC 102(b) refers specifically to acts in the United States and not elsewhere. It is therefore respectfully submitted it is improper to combine an admittedly non-enabling publication with sales abroad and conclude that the subject matter is barred under 35 USC 102(b).

Applicant respectfully submits also that the holding in Ex parte Thomson, 24 USPQ2d 1618 (Bd. Pat. App. & Inter. 1992) does not support the rejection here. That case involved a utility application rather than a plant patent application. Moreover, the materials sold in that case were seeds, not plants. The panel justified its position by stating that the necessary enablement came about by purchase and planting of the requisite seeds. 24 USPQ2d at 1620. The panel also distinguished the situation in In re LeGrice, 133 USPQ 365 (CCPA 1962) from the situation before it, pointing out, "Unlike the seeds of the asexually reproduced roses of LeGrice, which would not produce the claimed rose, the sexually reproduce [sic] of the Siokra cultivar do reproduce the claimed Siokra cultivar." 24 USPQ2d at 1621. The panel in a footnote to the foregoing sentence remarks, "Another

Serial No.: 09/902,750

point of distinction is that whereas LeGrice concerned a plant patent, appellant seeks a utility patent, which affords a broader scope of protection."

~~The Plant Breeder's Right published application lacks~~
sufficient detail to make the publication enabling. The Examiner so admits. As such, the Plant Breeder's Right published application is not de jure prior art. A sale outside the United States is not a patent defeating act under 35 USC 102.

Applicant respectfully submits that it is wholly improper to take two matters, each alone by law not constituting prior art under 35 USC 102, and assert that taken collectively those matters transform magically into a justifiable supportable rejection under 35 USC 102.

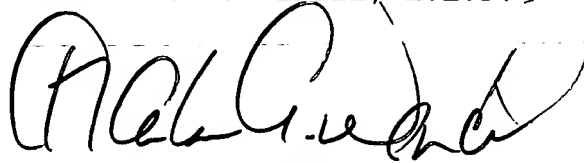
Serial No.: 09/902,750

Reconsideration of the case is earnestly solicited.

Respectfully submitted,

PARKHURST & WENDEL, L.L.P.

June 11, 2003
Date



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Enclosure:

Plant Breeder's Right papers

CAW/dlb/ch

Attorney Docket No. CHRE:111

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